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5 Costa Mesa, California 92626
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7 Facsimile: (888) 391-4105
8 Email: tvogele@tvalaw.com

9 Attorneys for debtor-in-possession Santa Cruz
10 Berry Farming Company, LLC a California limited
11 liability company

12 **UNITED STATES BANKRUPTCY COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN JOSE DIVISION**

15 In re) CASE NO.: 15-51771
16)
17 SANTA CRUZ BERRY FARMING) Chapter 11
18 COMPANY, LLC, a California limited)
19 liability company) Courtroom: 3070
20)
21 Debtor-In-Possession.) **STIPULATION RE CONSENT TO ORDER**
22) **APPROVING DEBTOR-IN-POSSESSION'S**
23) **(I) POST PETITION MARKETING**
24) **AGREEMENT WITH SANTA CRUZ SALES,**
25) **LLC PURSUANT TO 11 U.S.C. § 363(c); AND**
26) **(II) ALLOW ADMINISTRATIVE EXPENSE**
27) **PRIORITY FOR COMMISSIONS TO SANTA**
28) **CRUZ SALES, LLC**

29 Date: August 13, 2015
30 Time: 2:00 P.M.
31 Place: United States Courthouse
32 Courtroom 3070
33 280 South First Street
34 San Jose, CA 95113-3099

35 This Stipulation Re: Order Approving Debtor-In-Possession's (I) Post Petition Marketing
36 Agreement With Santa Cruz Sales, LLC Pursuant To 11 U.S.C. § 363(c); and (II) Allow
37 Administrative Expense Priority for Commissions to Santa Cruz Sales, LLC (the "Stipulation") is
38 entered into as of July 28, 2015, by and between Santa Cruz Berry Farming Company, LLC, the
debtor and debtor in possession (the "Debtor") in the above-captioned bankruptcy case (the

- 1 -

STIPULATION FOR POST PETITION CONTRACT

1 “Case”), Tom Lange Company, Inc. and Tom Lange Company International, Inc. (“TLC”),
2 California Coastal Rural Development Corporation (“CCRDC”), Del Mar Food Products, Inc.
3 (“DMFP,” and collectively with TLC, the “Secured Parties” and each a “Secured Party”), the
4 Official Committee of Unsecured Creditors (the “Committee,” and collectively with Debtor and
5 Secured Parties, the “Parties” and each a “Party”). In support of the Stipulation, the Parties state
6 as follows:

7 A. On May 25, 2015, the Debtor filed a voluntary petition under chapter 11
8 commencing the Case.

9 B. Since the petition date, the Debtor has been marketing and selling its fruit without
10 the assistance or involvement of a marketing group or grower’s agent.

11 C. The Debtor, in its business judgment, believes that it is in the best interest of the
12 Debtor and its bankruptcy estate, to engage Santa Cruz Sales, LLC (“Sales”) to exclusively market
13 and sell its fresh fruit through the end of the 2015 crop season. Sales has provided marketing and
14 sales services to Debtor since July 13, 2015 without a contract in anticipation of the Court’s
15 approval of the Marketing Agreement.

16 D. Sales is entitled to an administrative priority expense for commissions earned
17 pursuant to the terms of the Marketing Agreement.

18 E. The Parties consent to the Debtor’s entry into a contract with Sales on the terms and
19 conditions set forth in the Marketing Agreement attached hereto as Exhibit “1”.

20 Based upon the foregoing, the Parties agree and stipulate as follows:

21 1) The Parties hereby consent to the Court granting an order (i) authorizing the Debtor
22 to enter into the Marketing Agreement through December 31, 2015, and (ii) allowing commissions
23 to Sales’ earned pursuant to the Marketing Agreement retroactive to July 13, 2015 as
24 administrative expenses incurred by the Debtor’s estate pursuant to an order substantially in the
25 form attached hereto as Exhibit “2” (the “Order”), to be paid pursuant to orders approving the use
26 of cash collateral as permitted therein
27

THOMAS VOGELE & ASSOCIATES, APC

DATED: July 28, 2015

BUCHALTER NEMER

DATED: July 28, 2015

ANASTASSIOU & ASSOCIATES

DATED: July 28, 2015

DUFFY & GUENTHER, LLP

By: /s/ Ralph Guenther (see authorization attached)
RALPH P. GUENTHER
Attorneys for Secured Creditor
Del Mar Food Products, Inc.

- 3 -

STIPULATION FOR POST PETITION CONTRACT

1 DATED: July 28, 2015

THOMAS VOGELE & ASSOCIATES, APC

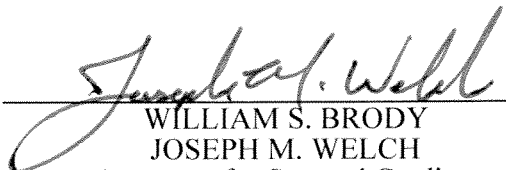
2
3 By: _____

THOMAS A. VOGELE
Attorneys for the Debtor
Santa Cruz Berry Farming Company, LLC

4
5
6
7 DATED: July 28, 2015

BUCHALTER NEMER

8
9 By: _____


WILLIAM S. BRODY
JOSEPH M. WELCH
Attorneys for Secured Creditor
Tom Lange Company, Inc. and
Tom Lange Company International, Inc.

10
11
12
13 DATED: July 28, 2015

ANASTASSIOU & ASSOCIATES

14
15
16 By: _____

EFFIE F. ANASTASSIOU
Attorneys for Secured Creditor
California Coastal Rural Development
Corporation

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19 DATED: July 28, 2015

DUFFY & GUENTHER, LLP

20
21 By: _____

RALPH P. GUENTHER
Attorneys for Secured Creditor
Del Mar Food Products, Inc.

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STIPULATION FOR POST PETITION CONTRACT

2093-001
BN 18762510v4

1 DATED: July 28, 2015

THOMAS VOGELE & ASSOCIATES, APC

2
3 By: _____

4 THOMAS A. VOGELE
5 Attorneys for the Debtor
6 Santa Cruz Berry Farming Company, LLC

7 DATED: July 28, 2015

BUCHALTER NEMER

8
9 By: _____

10 WILLIAM S. BRODY
11 JOSEPH M. WELCH
12 Attorneys for Secured Creditor
13 Tom Lange Company, Inc. and
14 Tom Lange Company International, Inc.

15 DATED: July 28, 2015

ANASTASSIOU & ASSOCIATES

16 By:  _____

17 EFFIE F. ANASTASSIOU
18 Attorneys for Secured Creditor
19 California Coastal Rural Development
20 Corporation

21 DATED: July 28, 2015

DUFFY & GUENTHER, LLP

22 By: _____

23 RALPH P. GUENTHER
24 Attorneys for Secured Creditor
25 Del Mar Food Products, Inc.

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DATED: July 28, 2015

FOX ROTHSCHILD LLP

Dale L. Bratton

By: Dale L. Bratton

~~MICHAEL A. SWEET~~

Attorneys for Official Committee of Unsecured
Creditors

- 4 -

STIPULATION FOR POST PETITION CONTRACT

2093-001
BN 18762510v4

Angela Brown

From: Ralph Guenther <rguenther@Montereylaw.com>
Sent: Wednesday, July 29, 2015 4:32 PM
To: Tom Vogeles
Cc: Angela Brown; Brendan M. Loper; Welch, Joseph M. (jwelch@Buchalter.com); Effie Anastassiou Esq.; Angela Love
Subject: RE: Stipulations

Tom:

My client has approved the Marketing Agreement Stipulation. You may indicate my signature on the stipulation and file it with the court.

Thank you,

Ralph P. Guenther, Esq.
DOUGHERTY & GUENTHER APC
149 Bonifacio Place
Monterey CA 93940
rguenther@montereylaw.com
Telephone: 831.649.5100
Facsimile: 831.649.5102

CONFIDENTIALITY:

This e-mail and any attachments hereto is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me by telephone at 831.649.5100 and permanently delete the original and any copy of any e-mail and printout thereof.

From: Tom Vogeles [mailto:tvogeles@tvalaw.com]
Sent: Wednesday, July 29, 2015 4:18 PM
To: Ralph Guenther <rguenther@Montereylaw.com>
Cc: Angela Brown <abrown@tvalaw.com>; Brendan M. Loper <bloper@tvalaw.com>; Welch, Joseph M. (jwelch@Buchalter.com) <jwelch@Buchalter.com>; Effie Anastassiou Esq. <effieesq@salinasaglaw.com>; Angela Love <AngelaL@Montereylaw.com>
Subject: Re: Stipulations

Ralph-

I'm in Virginia for the rest of the week. Have you received the okay on the contract with Subriver/Santa CruzSales? We would like to file today, if possible.

Tom Vogeles

Sent from my iPhone

Exhibit “1”

**Marketing Agreement between Santa Cruz Berry Farming
Company, LLC and Santa Cruz Sales, LLC.**

This Marketing Agreement (Agreement) entered into between Santa Cruz Sales, LLC (Marketing Agent), and Santa Cruz Berry Farming Company, LLC. (Grower). Marketing Agent and Grower are sometimes referred to each as a Party or collectively as Parties. The respective performance of the Parties under this Agreement are personal to the Marketing Agent and the Grower and such performance may not be assigned or otherwise transferred without the written consent of the other Party, whose consent shall not be unreasonably withheld, and approved by the Bankruptcy Court (defined below).

Exclusive Rights: Grower agrees to grant Marketing Agent the exclusive right, as Marketing Agent, to market and sell all fresh strawberries (Berries) grown by Grower in the State of California, which is expected to be approximately 600-800,000 trays (8-1lb. containers each) of fresh Berries for the balance of the 2015 season. This total equates to approximately 300-400,000 trays of organic Berries and approximately 300-400,000 trays of conventional Berries. Notwithstanding the foregoing, Grower may sell Berries as freezer fruit and juice fruit, which sales are specifically excluded from this Agreement. In addition, to the extent that Marketing Agent does not sell Berries, or sales arranged by Marketing Agent are rejected or declined by a customer, Grower may sell such Berries, which sales are specifically excluded from this Agreement.

Term: The term of the Agreement is for the period commencing on July 15, 2015, through November 30, 2015 (Marketing Period).

Commission: During the Marketing Period, the commission to be paid to Marketing Agent (pursuant to the terms of this Agreement) is \$0.35 per box of conventional and organic Berries for all boxes sold for sales price greater than \$5.50 per box (Commissions).

Marketing Agent is only entitled to Commissions on sales of Berries arranged by Marketing Agent under this Agreement upon actual receipt of payment on account of such sales. Commissions are calculated on the actual amount paid by customers and received by Grower for sales of Berries arranged by Marketing Agent under this Agreement, and will be paid to the Marketing Agent within 24 hours of receipt of payment on account of such sales.

Invoicing and Payment: All invoicing of sales will be generated on the Famous accounting program from Grower's Watsonville, CA office. All invoices will be sent by Grower to customers by U.S. Mail or email within 24 hours of shipment, with a copy to Marketing Agent, unless approved as a Price After Sale Transaction, defined as a shipment whereby the parties to the sale agree to a price following the prompt resale of the produce.

All collections for invoiced Berries will be made by Grower. Notwithstanding the marketing of the Grower's Berries pursuant to this Agreement, all sales of Berries arranged by Marketing Agent are sales of Berries by the Grower, and the Grower retains all PACA rights associated with such sales. The Grower has no liability to Marketing Agent for any default or failure by a customer to make timely payment on account of any sale of Berries.

Delivery of Crop: Grower will deliver all its Berries, at Grower's expense, at the cooler or coolers mutually agreed to by both parties, promptly after harvesting, and the Berries will be of good and marketable quality at the state of maturity required by Marketing Agent.

Sales: Marketing Agent has the exclusive right to sell Grower's Berries to retail customers throughout the United States, Canada and internationally if market conditions allow. Marketing Agent earns and is to be paid a Commission based upon the amount of payments actually paid by customers and received by the Grower, regardless of whether it or Grower actually initiates and documents the sale.

Any sales personnel questions pertaining to the marketing and sales of Berries by Marketing Agent are to be directed to Brian Frost, or in the event that Brian Frost is unavailable, to Fritz Koontz.

Marketing / Pricing: Marketing Agent agrees to endeavor to obtain the best prices possible for the kind and quality of Berries which the Grower delivers per this Agreement, although Grower acknowledges that Marketing Agent makes no guarantee whatsoever as to the prices it will obtain for the Berries or that the prices actually received will yield a positive return to the Grower.

In marketing Berries, Marketing Agent will not be liable for errors in judgment, provided it has acted, at all times, in good faith. The method of marketing the Berries, the price obtained, and the customers and clients to whom the Berries are marketed will be determined by Marketing Agent.

It is agreed by both Parties that the sales office will be located at the Grower's office in a portion of the office that is not currently being used by the Grower. The sales personnel of Marketing Agent will be given access to this office 24 hours per day 7 days per week. In return, Marketing Agent agrees to pay Grower as debtor in possession in the Bankruptcy Case a mutually agreed upon rental rate for the office and any attributable expenses thereto.

Marketing Agent will be responsible for all telephone, Internet and any other services needed to conduct day-to-day business.

Agreement Not a Partnership: This Agreement must not be construed by either party as a partnership or joint venture between Grower and Marketing Agent. This Agreement does not create any other relationship between the Parties, including, without limitation, that of landlord and tenant, employer and employee, partners or

joint ventures. The Parties remain separate entities and are free to conduct their respective businesses without any further restrictions other than those outlined in this Agreement. The Parties are each separately and independently carrying out their businesses and are independent contractors with respect to each other.

Misbranding: By signing this Agreement, Grower guarantees that the Berries grown under its supervision and control will not be adulterated or misbranded.

Dispute Resolution: The Parties understand that Grower is a debtor-in-possession pursuant to Chapter 11 of Title 11 of the U.S. Code, Case No. 15-51771 (Bankruptcy Case), pending in the U.S. Bankruptcy Court for the Northern District of California, San Jose Division (Bankruptcy Court) and the validity and enforceability of this Agreement is subject to Court approval. So long as this case is pending, the Parties agree that the Bankruptcy Court shall have exclusive jurisdiction to adjudicate all disputes concerning performance or obligations arising under this Agreement, or any disputes arising therefrom.

Marketing Agent expressly agrees that in no event shall it make any claim for expectancy or lost profits and shall limit its claims against Grower to payment of Commissions as a percentage of payments actually received from customers on sales actually made and paid.

In witness whereof, the duly authorized representatives of the parties have executed the Agreement as of the day(s) and year set forth below.

Grower

Santa Cruz Berry Farming Company, LLC

By: _____
Robert Fritz Koontz, Manager

Date: _____

Tax ID Number: _____

Marketing Agent

Santa Cruz Sales, LLC

By: _____
Brian Frost, Manager

Date: _____

Tax ID Number: _____

Exhibit “2”

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7 **UNITED STATES BANKRUPTCY COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9 **SAN JOSE DIVISION**
10

11 In re

12 SANTA CRUZ BERRY FARMING
13 COMPANY, LLC, a California limited
14 liability company,

15 Debtor.
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Case No. 15-51771 MEH

Chapter 11

**ORDER (I) APPROVING POST-PETITION
CONTRACT WITH SANTA CRUZ SALES,
LLC, AND (II) ALLOWING
ADMINISTRATIVE EXPENSE PRIORITY
FOR COMMISSIONS EARNED BY SANTA
CRUZ SALES, LLC RETROACTIVELY
FROM JULY 13, 2015**

Date: August 13, 2015

Time: 2:00 p.m.

Place: United States Courthouse

Courtroom 3070

280 South First Street

San Jose, CA 95113-3099
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The Court having considered the Stipulation Re: Order Approving Debtor-In-Possession's
(I) Post Petition Marketing Agreement With Santa Cruz Sales, LLC Pursuant To 11 U.S.C.
§ 363(c); and (II) Allow Administrative Expense Priority for Commissions to Santa Cruz Sales,
LLC – [Docket No. ___] (the "Stipulation") dated July 28, 2015, by and between Santa Cruz Berry
Farming Company, LLC, the debtor and debtor in possession (the "Debtor") in the above-

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STIPULATION FOR POST PETITION CONTRACT

captioned bankruptcy case (the “Case”), Tom Lange Company, Inc. and Tom Lange Company International, Inc. (“TLC”), California Coastal Rural Development Corporation (“CCRDC”), and Del Mar Food Products, Inc. (“DMFP,” and collectively with TLC and CCRDC, the “Secured Parties” and each a “Secured Party”), and the Official Committee of Unsecured Creditors (the “Committee,” and collectively with Debtor and Secured Parties, the “Parties” and each a “Party”) and papers filed with the Court relating thereto, and for good cause, the Court finds and orders as follows:

IT IS HEREBY FOUND that:

A. On May 25, 2015, the Debtor filed a voluntary petition under chapter 11 commencing the Case.

B. Since the petition date, the Debtor has been marketing and selling its fruit without the assistance or involvement of a marketing group or grower’s agent.

C. The Debtor, in its business judgment, believes that it is in the best interest of the Debtor and its bankruptcy estate, to engage Santa Cruz Sales, LLC (“Sales”) to exclusively market and sell its fresh fruit through the end of the 2015 crop season. Sales has provided marketing and sales services to Debtor since July 13, 2015 without a contract in anticipation of the Court’s approval of the Marketing Agreement.

D. Sales should be entitled to an administrative priority claim for commissions earned pursuant to the Marketing Agreement that may be paid from cash collateral pursuant to orders approving the use of cash collateral.

E. The Parties have entered into a stipulation consenting to the Debtor’s entry into the Marketing Agreement attached hereto as Exhibit “1”.

IT IS HEREBY ORDERED that:

1. Debtor is authorized to enter into the Marketing Agreement attached hereto as Exhibit “1” and to bind the Debtor to perform all obligations thereunder.

1 2. Santa Cruz Sales, LLC is entitled to an administrative priority expense for
2 commissions earned pursuant to the Marketing Agreement from July 13, 2015, through the end of
3 the growing season or December 31, 2015, whichever is earlier.
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STIPULATION FOR POST PETITION CONTRACT

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
3199 Airport Loop Drive, Suite A3, Costa Mesa, California 92626

A true and correct copy of the foregoing document described **STIPULATION RE CONSENT TO ORDER APPROVING DEBTOR-IN-POSSESSION'S (I) POST PETITION MARKETING AGREEMENT WITH SANTA CRUZ SALES, LLC PURSUANT TO 11 U.S.C. § 363(c); AND (II) ALLOW ADMINISTRATIVE EXPENSE PRIORITY FOR COMMISSIONS TO SANTA CRUZ SALES, LLC** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On 7/29/2015 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- United States Trustee (SJ) USTPRegion17.SJ.ECF@usdoj.gov, ltroxas@hotmail.com
- Thomas A Voegel on behalf of Debtor tvoegel@tvalaw.com
- Effie F. Anastassiou on behalf of Creditor California Coastal Rural Development Corp. and K&M Enterprises, LLC effieesq@salinasaglaw.com; paralegal@salinasaglaw.com
- Joseph M. Welch on behalf of creditor Tom Lange jwelch@buchalter.com; dcyrankowski@buchalter.com
- William Brody on behalf of creditor Tom Lange wbrody@buchalter.com
- Thomas J. Polis on behalf of Debtor Santa Cruz Berry Farming Company, LLC tom@polis-law.com, paralegal@polis-law.com
- Michael A. Sweet on behalf of Creditor Committee Official Committee of Unsecured Creditors msweet@foxrothschild.com, mflores@foxrothschild.com
- Rebecca A. Caley on behalf of Requestor Mercedes-Benz Financial Services dba Daimler Truck Financial rcaley@caleylaw.com
- Ralph P. Guenther on behalf of Interested Party Del Mar Food Products Corp courts@tkdougherty.com; angelal@montereylaw.com
- Jerry Namba on behalf of Creditor Beth Crandall nambaepiq@earthlink.net; jnambaepiq@earthlink.net

☐ Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):

On 7/29/2015 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on 7/29/2015, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission

and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

7/29/15

/s/ Angela Brown

VIA OVERNITE EXPRESS

Judge M. Elaine Hammond
United States Bankruptcy Court
Northern District of California
United States Courthouse, Room 3035
280 South First Street
San Jose, CA 95113-3099

CCOF Certification Services, LLC
2155 Delaware Avenue, Suite 150
Santa Cruz, CA 95060
E: bcoltrin@ccof.org

Cedar Point Nursery
PO BOX 1447
Klamath Falls, OR 97601
E: cpaulsen@cedarpointnursery.net

VIA EMAIL

Armando Ramirez
287 Carsserly Road
Watsonville, CA 95076
E: aramirez@santacruzberry.com

NABTA USA International, Inc.
6955 Barton Road
Granite Bay, CA 95746
E: george@nabta.com

EDD

Bay Area Collection Office
7677 Oakport Street, Suite 400
Oakland, CA 94621-1933
E: itcdbg@edd.ca.gov

VIA US MAIL

UNITED STATES TRUSTEE (SJ)
80 S 1st St #268
San Jose, CA 95113

Franchise Tax Board
Bankruptcy Section MS A-340
PO Box 2952
Sacramento, CA 95812-2952
E: BKBNCNotices@ftb.ca.gov

Cypress Ag Consulting
PO BOX 3597
Freedom, CA 95019

Norcal Nursery
PO BOX 1012
Red Bluff, CA 96080
E: krisb@sakumabros.com

Famous Software
8080 North Palm Ave., Suite 210
Fresno, CA 93711

Fenton & Keller
PO BOX 791
Monterey, CA 93942

Internal Revenue Service
Department of the Treasury
Ogden, UT 04201-0005
E: cio.bncmail@irs.gov

Nationwide Agribusiness Ins.
c/o McSherry & Hudson
PO BOX 2690
Watsonville, CA 95077

In re: SANTA CRUZ FARMING COMPANY, LLC
Debtor(s).

CHAPTER: 11

CASE NUMBER: 15-51771

Pacific Gas and Electric Company
PO BOX 8329
Stockton, CA 95208

Pajaro Valley Water Management
36 Brennan St
Watsonville, CA 95076

RDO Water, LLC
10108 Riverford Road
Lakeside, CA 92040

Wendal Rosen Black & Dean, LLP
1111 Broadway, 24th Floor
Oakland, CA 94607